IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

TUESDAY, THE 21ST NOVEMBER 2006 / 30TH KARTHIKA 1928

WP(C).No. 20148 of 2004(W)

PETITIONER:

K. RAJAPPAN, KAPPALUMKAL HOUSE,
PUTHENANGADI COLONY, AROOR, CHERTHALA.

BY ADV. SRI.P.RAMAKRISHNAN

RESPONDENTS:

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1. THE REGISTRAR OF CO-OPERATIVE SOCIETIES, CO-OPERATIVE DEPARTMENT, THIRUVANANTHAPURAM.

2. KERALA STATE CO-OPERATIVE EMPLOYEES PENSION BOARD, REPRESENTED BY ITS SECRETARY, T.C.NO.28/2781, RAJASREE, CHETTIKULANGARA, TRIVANDRUM-1.

3. PREMIER TYRES EMPLOYERS MULTIPURPOSE CO-OPERATIVE SOCIETY LIMITED E.282, KALAMASSERY REPRESENTED BY ITS SECRETARY.

BY ADV. SRI.T.R.RAMACHANDRAN NAIR, SC,KSCEPB
SRI.ANTONY DOMINIC
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SMT.PRIYA MAHESH
SMT.PRIYA MANJOORAN
BY SENIOR GOVERNMENT PLEADER SRI.P.N.SANTHOSH.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) 20148/2004

APPENDIX

Ext.P1 Proceedings of the first respondent sanctioning pension to petitioner dated 17.3.1997.

Ext.P2 Communication from Registrar of Co-operative Societies No.EM(2) 23546/1997 received by the petitioner.

Ext.P3 True copy of the order No.E.M.(2) 7876/04 dated 21.5.2004 issued by the first respondent to the petitioner.

//True copy//

P.S.to Judge.

J.M. JAMES, J.

W.P.(C) No.20148 of 2004

Dated this the 21st November, 2006.

J U D G M E N T

The writ petitioner was an employee of the 3rd respondent, Co-operative Society. He worked there from 1.3.1971 to 31.12.1973 on a consolidated pay. From 1.1.1974, a scale of pay was sanctioned to him. He retired from service on 30.11.1996. Without counting the consolidated pay, which he was drawing, together with his contribution, as well as the contribution made by the employer for the above period, the pension was worked out, which according to him is less. Therefore, he challenged the order of fixing the pension through O.P.No.12526/1998, which this Court disposed of, on 17.12.2003. Accordingly, as per the direction of this Court, the Registrar of Co-operative Societies had considered his case afresh. Under Section 61 of the Kerala Co-operative Societies Act, 1969, in short 'the Act', he was the member of the contributory provident fund scheme, wherein both the employer and the employee had contributed to the scheme.

2. Whereas, the Kerala Co-operative Societies Employees Self Financing Pension Scheme, 1994, in short 'the pension scheme', came into effect from 3.6.1993, as notified in the Kerala Gazette, Extra Ordinary No.251, dated 14.3.1995. Thus, because of the provisions of the pension scheme, petitioner came within the coverage of the said scheme. According to the scheme, there was no contribution of the employee to the pension fund, and the employer Society alone contributed, at the rate of 8.33% of the pay, as specified in clause 2(g) of the pension scheme.

3. At the time of the commencement of the pension scheme, clause 2(g) of the pension scheme was defined as,

> "Pay includes,
>
> 1) Basic Pay
> 2) Special Pay
> 3) Personal Pay
> 4) Any other amount ordered to be treated as pay, for the purpose of pension under the scheme."

4. However, after the amendment, which came into effect from 1.4.1998, clause 2(g) of the pension scheme was,

"Pay includes,

1) Basic Pay
2) Special Pay
3) Personal Pay
4) Dearness Allowance
5) Any other amount ordered to be treated as pay, such as consolidated pay."

5. As discussed above, the writ petitioner retired on 30.11.1996. Thus, serial No. (5) of clause 2(g) of the pension scheme, wherein the consolidated pay was also brought in 'to include the pay', was not available to the writ petitioner, on his retirement date, 30.11.1996.

6. The learned counsel has placed before me the Principle of **the Mischief Rule**, as discussed in Heydon's case, (1584 3 REP 7b), and submitted that the Court has to consider, how the law stood, when the statute to be construed was passed, what the mischief was, for which the old law did not provide, and the remedy provided by the statute to cure the mischief. (Re Mayfair Property Co. (1898) 2 Ch. 28, at p.35) Therefore, the submission of the counsel is that as the petitioner was making the contribution as an employee, and the employer was making its contribution, as the law then stood, the said benefit could not be deprived of, because of the change of provision of

law, to which he came into, not out of his own option, but out of the operation of law that was latter passed. In this writ petition, or even when O.P.No.12526/1998 was preferred, there was no challenge on the amended clause 2(g) of the pension scheme. Unless a particular amendment or a provision is set aside, varied or interpreted otherwise than the said law laid down, the same has to be followed in letter and spirit and accepted with the legislative intentions therein. When there is no doubt about an application of a provision, the necessity of a different interpretation do not arise. In the case at hand, as quoted above, only with effect from 1.4.1998, such pay as consolidated pay was made to be included within 'pay' under clause 2(g) of the pension scheme. Therefore, the inclusion of the contribution, which the writ petitioner made to the provident fund will come only from 1.4.1998, and not before it, as the writ petitioner retired on 30.11.1996. The Registrar was fully legal in his interpretation, when he declined the prayer of the writ petitioner, to count his service contributions from 1.3.1971. Therefore, I find nothing to interfere with Ext.P3 order of the Registrar.

7. At this juncture, the learned counsel appearing for the writ petitioner, made a submission that, there being no explicit provision, about the way in which a contribution made by an employer to the provident fund, should be paid back to the employee, on his retirement, then the same could be ordered to be paid to the employee.

8. The learned counsel appearing for the second respondent, however, submitted that at the time of passing of Ext.P3 order, such a contention was not raised before the Registrar, and, therefore, the same requires further examination by the Registrar.

9. In the above facts situation, the writ petitioner may approach the second respondent with such a prayer, and the second respondent, shall, in such event, consider the prayer and pass appropriate orders, according to law.

Writ Petition is closed as above.

J.M. JAMES,
JUDGE

nj.